

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.63 OF 2005

Shri Atulchandra Madhukar Kulkarni. ...Appellant
V/s.
Mrs.Hema Atulchandra Kulkarni. ...Respondent

Mrs.Seema Sarnaik for the Appellant.
Mrs.Anjali Helekar for Respondent.

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FAMILY COURT APPEAL NO.1 OF 2004

Mrs.Hema Atulchandra Kulkarni. ...Appellant
V/s.
Shri Atulchandra Madhukar Kulkarni. ...Respondent

Mrs.Anjali Helekar for Appellant.
Mrs.Seema Sarnaik for Respondent.

WITH

FAMILY COURT APPEAL (STAMP) NO.1836 OF 2005

Shri Atulchandra Madhukar Kulkarni. ...Appellant
V/s.
Mrs.Hema Atulchandra Kulkarni. ...Respondent

Mrs.Seema Sarnaik for the Appellant.
Mrs.Anjali Helekar for Respondent.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE OF RESERVATION OF JUDGMENT : 4-10-2005
DATE OF PRONOUNCEMENT OF JUDGMENT : 28-10-2005

JUDGMENT (PER SMT.R.S. DALVI, J.) :-

1. These three appeals have been filed from a Judgment of the Family Court No.3 at Pune dated 30th May, 2003 disposing of one petition filed by the husband (the appellant in Appeal no.63/05) and the other petition filed by his wife (the respondent in that appeal.)

2. The husband had filed a petition for divorce under Section 13-1(ia) and 13-1(iii) of the Hindu Marriage Act, being Petition No.A381/2001 and claimed custody of his child, Varun.

3. The wife had filed a petition for restitution of conjugal rights, being Petition No.A423/2002 and claimed maintenance for herself and her son, Varun.

4. The husband's petition was decreed; the wife's petition was dismissed. The husband's prayer for custody of his child was rejected.

5. The husband was directed to pay alimony at the rate of Rs.5000/- per month to the wife and at the rate of Rs.2000/- per month to the child Varun since the date of the passing of the Judgment.

6. The husband was also directed to pay costs of both the petitions to the wife and to bear his own.

7. Both the parties have challenged the said Judgment in their respective appeals. The husband is aggrieved by denial of custody of the child and the grant of maintenance to the wife and child whereas the wife is unhappy with the decree of divorce.

8. From the averments in the respective petitions and the evidence led by the parties, the case of cruelty practised upon the husband and the fact that the wife was suffering from Schizophrenia such that the husband could not reasonably be expected to live with her, would have to be seen. Further whether the husband has withdrawn from the society of the wife without reasonable excuse as contended by the wife would also have to be seen.

9. There is not much dispute in this appeal with regard to the fact that the husband would have to provide alimony for the wife and maintenance for their child. Similarly, there is not much dispute with regard to the custody and

access of their child Varun. The husband has filed an affidavit undertaking to pay the amount of alimony to the extent of Rs.10 lakhs as directed by us.

10. It may be stated that the learned Judge of the Family Court No.3 at Pune has extensively considered the evidence led by and on behalf of both the parties with regard to the aspect of divorce/restitution of conjugal rights.

11. The parties besides examining themselves had examined other witnesses. The husband examined the Doctor who treated his wife one Dr.Suresh Pant, his father Madhukar Kulkarni and his friend one Omprakash. The wife examined another Doctor who treated her one Dr.Ratnakar Shirvaikar.

12. The reading of the evidence as a whole shows that after about 5-6 years of marriage and when their child was about 4-5 years old, the parties had a serious rift in their relationship. The husband is a IPS officer. The wife is a housewife. The parties lived at various places in Maharashtra where the husband was transferred during his service. The incidents narrated by the

parties are in consonance with their stay at various places. The husband was transferred from Latur to Jalgaon, Buldhana, Nagpur, Bhandara and later sent on deputation in UN Peacekeeping force at Kosovo. He is now on deputation with the Central Government.

13. The evidence shows more than usual wear and tear of marriage atleast from the time the parties were stationed at Buldhana. That was during the period from May 1996 to July 1998. The husband has narrated various instances to show case of cruelty which have been listed and enumerated by the learned Family Court Judge relating to incidents that happened either between the parties or with others at various places. The husband has alleged that the wife insulted him, was aggressive, rebelled against him, abused him and insisted on spending a more than his means. His evidence further shows her acts of snatching the telephone whilst he was conversing, getting up late, not preparing food, demanding sex at odd hours, which caused him mental tension. He has narrated certain instances when the wife did not take care of the guests as also his relations as expected. A more serious case has been made that the wife suffered from hallucinations, considered

suicide, refused to celebrate his birthday or his son's birthday in the traditional way and visited his office to make irrelevant enquiries. He has alleged that due to her mental disorder, she used to keep the door of the bathroom open while bathing. Upon such evidence, the husband prayed for divorce on the ground that it is impossible to live with her.

14. The evidence of the husband shows serious disputes whilst the husband was on deputation at Kosovo. The wife was not happy at the assignment. Despite his giving an amount of Rs,3000/- per month for the wife and the child and handing over Rs.2.5 lacs, she was not satisfied. He came to India for her birthday and gave her Rs.1 lac but she showed no concern. When he had to leave to go back to Kosovo on 25th May, 2000, his wife suddenly became very aggressive and violent, threw the luggage as well as her Mangalsutra. The husband accordingly contends that she suffered from serious major depression which is a mental disorder. The wife's evidence essentially shows denials of these allegations. The evidence of father of the husband is rather repetitive. The evidence of friend of the husband who is the press reporter, corroborates certain incidents. The

evidence of the doctor examined by the husband who is a M.D. Psychiatrist and who has admittedly treated the wife, shows her suffering from serious depression. She has admittedly been treated by him from February 1999 to December 2000 for mood disorder due to matrimonial problems for which she could adjust. Her last visit is stated to be on 29th December, 2000. His evidence shows that she commenced treatment at a late stage and hence, was not completely cured.

15. It appears that from October 2000, his wife changed her doctor. Her witness Dr.Ratnakar Shirvaikar who is also a Psychiatrist has deposed that her condition has improved upon treatment for Schizophrenia which continued for two and half years. His evidence also shows the abnormal ideas in her mind, her sleep disorder and the fact that she used to cry and shout abnormally and talk to herself and also quarrel with her mother. His evidence shows shock treatment given to her and her non-cooperation with the doctor. She last saw the Doctor in March 2002. Her said Doctor has opined that the husband might have suffered a lot due to her behaviour.

16. The learned Judge has considered this

entire evidence alongside the various judgments relating to aspects of cruelty as a ground for grant of divorce.

17. Though the evidence of the husband has been refuted by the wife, the fact that she was treated by the two Doctors who have deposed before the Family Court for Schizophrenia has not been disputed. The treatment has continued for several years. It is also not denied that the husband was to be on deputation at Kosovo when the parties fell apart.

18. One aspect between the parties stands out. During the husband's posting at Buldhana in about February 1997, a constable who worked under the husband committed suicide leaving a note implicating the husband. It is the case of the wife that she suffered depression because of the involvement of the husband in a departmental inquiry proceedings consequent upon that incident. Such suffering shows tremendous sensitivities on the part of the wife for the husband's misdemeanour during service. The husband is stated to have been exonerated in the enquiry proceedings which completed in December, 1997. However, the wife's state of mental disorder

continued even thereafter. That incident has not been denied by the husband. However, it is not shown that the wife suffered from any mental disorder only after February 1997. The parties are shown to have strained relationship due to her strange behaviour, albeit to a much lesser degree, even earlier.

19. The fact remains that neither of the Doctors who have been examined by both the parties and who treated the wife have deposed that she is completely cured. Her own witness has deposed that she could not be completely cured because she did not offer the required co-operation despite the fact that she underwent shock therapy.

20. Reading of the evidence as a whole therefore leads us to the conclusion that if the husband forms an opinion that he cannot continue to live with his wife any longer due to her mental state, it would not be an unreasonable decision. It is for him to assess his circumstances and arrive at the decision. In the facts of the present case, we are of the view that he cannot be reasonably expected to continue to live with her any longer. The Judgment of the learned Judge granting decree of divorce, therefore, cannot be

faulted. Under the circumstances, the Judge's refusal to grant the wife a decree for restitution of conjugal rights also cannot be faulted though one's sympathy may go out to her.

21. The parties have one son named 'Varun' born on 13th July, 1995. The son has remained in the custody of the wife throughout. The husband has claimed the custody of the child in the petition. He has contended that, with the mental difficulties of his wife, it would not be desirable to continue the child with her and the child may suffer in education and in his upbringing. He has, however, not seriously pressed that relief in appeal though his appeal is essentially on the ground of denial of custody of the child. The husband, an IPS officer, is on a transferable post. He is shown to have been transferred at least five times during his marriage when he lived with his wife. The child is attending a school in Pune. We are told that the husband is exploring the possibility of a second marriage. The husband is at present on deputation with the Central Government. The learned Family Judge has properly considered these aspects while granting custody of his son Varun to his mother. We have talked to the child. He is in 5th

standard and appears quite mature. The child and the wife are staying with her mother who is also attending to the child. We do not find that he has suffered in education or in his upbringing. Besides removing him from mother's custody will affect her chances of recovery seriously and that will have an unfortunate impact on the child's mind. We find no reason to change the custody otherwise. The husband has been getting access to his son as per prior arrangement made amicably between the parties and there is no grievance on that count. We are, therefore, of the view that the present arrangement need not be disturbed.

22. The learned Family Court Judge has granted alimony to the wife at the rate of Rs.5000/- per month and to the child at the rate of Rs.2000/- per month. That was also the order of interim maintenance. The maintenance amount has been regularly paid. Since the decree of divorce granted to the husband is required to be confirmed, the wife would be entitled to the alimony under the provisions of Section 25 of the Hindu Marriage Act. Further the child will be entitled to the grant of maintenance for his upkeep as well as for education during his minority under Section 26 of the Hindu Marriage

Act. The petitioner has produced his latest Income-tax Returns for the Assessment Year 2004-2005 for the previous ended on 31st March, 2004. His total annual income is a little over Rupees Three lacs. He has made adequate investments for himself in PPF, LIC, ULIP and NSC. We are told that he would consider a second marriage. We, therefore, deem it fit that the husband makes a capital investment for the benefit of his wife as well as his child such that they would receive the aforesaid amount per month by way of interest therefrom. We further feel it necessary to make an adequate provision for the child's education within such investment. Since the wife resides with her mother, a separate provision for her residence need not be insisted upon. The wife is the only child of her parents. Her father has passed away and she can continue to stay with her mother. The husband has made certain investments in the name of his wife as well as his child in PPF, LIC and ULIP. These investments are required to be considered when the permanent alimony for the wife and maintenance amount for the child are required to be fixed. Considering these amounts, the husband is required to make an investment of Rupees Ten lakhs in RBI Bonds in the joint names of his wife and his son

within a specified period as directed hereinbelow.

23. Hence, the following Order :_

(1). The Judgment and Order of the Judge, Family Court No.3, Pune dated 30th May, 2003 in Petition Nos.381/01 and 423/02 to the extent of divorce is confirmed. The marriage between the husband Atulchandra Kulkarni and his wife Hema Kulkarni is dissolved by that decree of divorce under Sections 13-1(ia) and 13-1(iii) of the Hindu Marriage Act.

(2). The custody of the child shall continue to be with the wife. The husband shall be entitled to reasonable access to the child preferably on second and fourth weekends. The husband shall also be entitled to access during the first half of all vacations.

(3). The husband shall invest Rs.4.5 lakhs in RBI Bonds in the name of his wife and son within four weeks from today. The wife shall execute the Release Deed as called upon by the husband also within four weeks from today in respect of the Securities which stand in her name. The husband shall invest a further amount of Rupees Three lakhs in RBI Bonds in the name of his wife and son

within four weeks of the execution of the Release Deed by the wife. The husband shall further invest Rs.2.5 lakhs in RBI Bonds in the names of his wife and son within six months from today.

(4). The undertakings of the husband to make the aforesaid investments are accepted.

(5). The husband shall continue to pay the maintenance amount of Rs.2000/- per month for his child Varun during his minority.

(6). The husband shall pay costs of this appeal as well as the petition in the Family Court on behalf of his wife fixed at Rs. Ten Thousand, and shall bear his own costs.

(7). The Decree of Divorce shall become operative after the aforesaid investments are made.

24. All the three appeals stand disposed of as above.

(H.L. GOKHALE, J.)

(SMT.R.S. DALVI, J.)